

# “Walking on two legs in Chinese law schools”<sup>1</sup>: A Chinese / U.S. Program in Experiential Legal Education

**Brian Landsberg\***

*Dong Jingbo, a young faculty member at the China University of Political Science and Law in Beijing, used to teach using only the traditional lecture technique which she had experienced in her own legal education in China and Korea. Until, that is, Professor Dong attended summer workshops given by Pacific McGeorge, in partnership with American University's Washington College of Law, and also earned an LL.M. at Pacific McGeorge, in the Teaching of Advocacy. Her classes no longer are limited to lecture. She has developed a simulation to use in Chinese criminal law classes, has demonstrated it to other Chinese law professors and has written a law review article about it.<sup>2</sup> The simulation is based on a news story about a man who used his wife's ATM card to make two successive withdrawals of 10,000 RMB, while the receipts reflected a total withdrawal of only 2 RMB, and even though his wife had only 10,000 RMB in her account. The man was charged with theft. Professor Dong assigns students to play the role of the prosecutor, defense counsel and judge. They are given the definition of theft, and must argue and decide the case. She then provides a series of additional facts, requiring deeper analysis. Introduction of this role play into the class builds on learning theory to provide deeper*

<sup>1</sup> A report in March 2010 from Southwest University of Science and Technology Law School, regarding a workshop our US AID program conducted in Wuhan, China in December 2009 informed us: “After much discussion, our teachers adopted ‘walking on two legs’ guiding principle for the practical teaching reform; it means legal clinic teaching and traditional teaching develop in a two-pronged way to promote the experiential teaching.” Translated by Wang Yongmei, e-mail to Brian Landsberg, April 2, 2010.

\* Distinguished Professor and Scholar, Pacific McGeorge School of Law, Sacramento CA, United

States of America. There are many people to thank: those who have participated in our program, who are too numerous to list, and those who have graciously commented on earlier drafts. First, however, I want to express gratitude to Elliott Milstein, who brought great passion and depth of understanding to the program, as well as commenting on a draft of this article. Frank Bloch, Jay Leach, Thomas Main, Jarrod Wong, and Dorothy Landsberg have provided very helpful suggestions.

<sup>2</sup> Dong Jingbo, *How to Incorporate Simulations in Traditional Courses*, China legal education, 2009, volume 3. She is also co-teaching a new course in

*understanding of the elements of the crime of theft than a student could obtain by listening to a lecture. Moreover, this learning by doing encourages analysis, fact development, understanding of the important role of the theory of the case, and independent thinking. For these reasons, and as our experience in China affirms, role play is a useful learning method in traditional, simulation, and clinical law courses.*

Our “Educate the Educators” program to teach Chinese law professors such as Professor Dong U.S. experiential education techniques has itself taught us many lessons. Perhaps the most important – and one amply supported by experience – is that law schools should adopt an integrated legal education approach, blending traditional, simulation, and clinical law courses. Each type adds value to legal education; each reinforces the learning under the other two methods.

In varying degrees legal educators in many countries, including the United States and China, have come to accept the need to find more effective ways to teach professional skill and values. I believe that experiential teaching methods best meet that need. Experiential education refers to learning by doing. The main branches are clinical education, where students represent real clients, and simulation courses where students work with case files to represent fictional clients in client counseling, business planning, negotiation, mediation, arbitration, trial advocacy, and appellate advocacy. These two branches can be understood as belonging to the same tree. As Frank Bloch has put it, “three elements stand out as constituting the most important commonly conceived notions of clinical legal education around the world: professional skills training, experiential learning, and instilling professional values of public responsibility and social justice.”<sup>3</sup> These observations form the base upon which the Pacific McGeorge School of Law built a program to educate Chinese law professors in experiential teaching methods, especially as used in professional legal skills courses and clinical legal education courses.

Although lecture is the traditional teaching method in China, Chinese law schools have shown a growing interest in “practical” education, partly under prodding from the Ministry of Education. As Elliott Milstein noted at our recent training for Chinese law professors in Wuhan, China today calls to mind an earlier moment in the development of U.S. legal education, when, in the 1960’s and 1970’s, with support from the Ford Foundation, law schools began an era of experimentation and openness to new ideas, and when new organizations arose to promote clinical legal education.<sup>4</sup> This movement not only promoted skills education but also the transmission of values: providing platforms to enable students to learn what it means to be a lawyer, including promotion of a more just society. The history of that movement has been marked by continued challenges which persist to the present day, but overall clinical education has advanced in the United States, and the American Bar Association recognizes its importance to legal education.<sup>5</sup>

Our program for Chinese law professors began in 2006 with a “rule of law” grant from the United

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advocacy skills. Moreover, she is now part of the Chinese faculty training other Chinese law professors in experiential legal education, as part of the second phase of our program. She is writing a book about advocacy education.

<sup>3</sup> Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 Wash. U. J. L. & Pol’y 111, 121 (2008).

<sup>4</sup> See Robert MacCrate, *Foreword*, in Roy Stuckey and others, *Best Practices for Legal Education*, vii (Clinical Legal Education Association 2007).

<sup>5</sup> ABA Standard 302(b)(1) requires law schools provide “substantial opportunities” for students to take live client clinical or externship courses. Standard 405 requires that clinical faculty be given “a form of security of position reasonably similar to tenure.”

States Agency for International Development (US AID) based on two premises. First, the rule of law depends upon the existence of lawyers, judges, and prosecutors with professional skills and a professional identity based on values.<sup>6</sup> Second, experiential legal education is an essential method for inculcating skills and professional values. These premises were validated by the publication the following year of the Carnegie Foundation report<sup>7</sup> and Best Practices in Legal Education.<sup>8</sup> An unstated premise of our proposal was that U.S. assistance in promoting the rule of law in China would have to come primarily through indirect means. In the words of one western scholar of Chinese law: "Foreign actors lack the local knowledge and the influence to significantly shape the outcome."<sup>9</sup> We recognized from the beginning that cross-cultural and cross-system legal training ultimately depends upon the Chinese trainees to design appropriate curricula and adopt appropriate teaching methods, by combining their understanding of local culture and legal system with their learning from the training. We aspired thus to empower Chinese law professors.

These premises seem to be consistent with Chinese government and academic thinking. Hu Jintao expressed commitment to "comprehensively implement the rule of law as a fundamental principle and speed up the building of a socialist country under the rule of law." He noted the need to "strengthen the enforcement of the Constitution and laws, ensure that all citizens are equal before the law, and safeguard social equity and justice and the consistency, sanctity and authority of the socialist legal system."<sup>10</sup> Achievement of these goals requires a well-trained, ethical professional

<sup>6</sup> Professionalism is a necessary, but not a sufficient prerequisite to the rule of law. Rule of law also depends upon the structure and content of the legal system. But a well designed structure and just laws are unlikely to bring about the rule of law if the lawyers and judges lack professional skills and values. For example, "an independent and authoritative judiciary assumes a competent and clean corps of judges." Randall Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions*, in Randall Peerenboom [ed.], *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, 69, 87 (Cambridge Univ. Press 2010). See also St  phanie Balme, *Local Courts in Western China: The Quest for Independence and Dignity*, in Peerenboom [ed.], *supra*, 154, 173 ["Professionalism and transparency are both an objective and a precondition for the independence of the judiciary"]. As one Chinese legal scholar put it, "if there are only legal rules without highly-qualified law professionals, the rule of law is like a castle in the air." Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 *Fordham Int'l L.J.* 421 (2007). William P. Alford warns against assuming that the legal profession in China will promote the rule of law; indeed, he suggests that it has been complicit in corrupt practices. William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People's Republic of China*, in William P. Alford, *Raising the Bar: The Emerging Legal Profession in East Asia*, 287, 293 (Harvard Univ. Press 2003). But see, Xiaorong Li, "Aspiration for Rule of Law Spurs

Chinese Civil Society", presentation at George Washington University Law School, Feb. 19, 2010: "First, the promise of rule of law gave people hope, inspired them, and the law supplied the ammunition. The Chinese law has been the double-sword which the party-state uses to put people in their place but it is also used by the people to hold the government accountable and seek justice. Second, many young lawyers, products of the newly minted law schools in China's universities, take the government's promise of rule of law and what they learnt in law textbooks literally, but as they meet the reality of rule by the CCP political and legal committees, they become the front-row challengers of the system, and leaders in the civil rights movement."

<sup>7</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (John Wiley & Sons 2007).

<sup>8</sup> Roy Stuckey and others, *Best Practices for Legal Education* (Clinical Legal Education Association 2007).

<sup>9</sup> Peerenboom, *supra*, at 88. See also, Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 *Wm & Mary Bill Rts. J.* 603, 620 (2002-3) ("This kind of cooperative work must be done in a spirit of multiple humilities").

<sup>10</sup> Hu Jintao, Report to 17th National Congress of the Communist Party of China, Oct. 15, 2007, [http://news.xinhuanet.com/english/200710/24/content\\_6938749.htm](http://news.xinhuanet.com/english/200710/24/content_6938749.htm). Elliott Milstein has

cadre of lawyers and judges. The latter, in turn, depends upon the committed training by Chinese law schools of tomorrow’s lawyers and judges. As Professor Guo Jie, Vice-president of Northwest University of Political Science and Law, has observed: “The outcome of the legal education will influence and even decide, in some sense, the direction, process and future of the judicial reform and development of the whole country.”<sup>11</sup>

## I

This article describes how our “rule of law” program has been structured and will be structured going forward and the methods used in the program. It then turns to the challenges we have faced and will face going forward and the lessons we have learned. It concludes with a discussion of the program’s impact.

In designing our program, we were struck by the seeming consensus among many Chinese educators at a conference of Chinese and American law school deans in Beijing in 2005. Professor Huang Jin of Wuhan University noted that China needs a large number of lawyers equipped to perform on the global market. He believed that although lawyers should be professionals with practical problem-solving abilities, the curriculum neglected practical skills. President Huai Xiaofeng of the National Judges College also mentioned the need to enhance the problem-solving ability of students, as well as their professional ethics and ability to handle trials and mediation. Another speaker, from China University of Political Science and Law (CUPL), also noted that practical skills training in China was under-developed.<sup>12</sup> The list of core and elective courses taught in China consists almost entirely of doctrinal courses rather than skills courses. It is unclear from the list how many of those courses also have an analytical component, such as the U.S. case discussion method. Professor Wang Weiguo has written that “the Socrates method, or in Chinese usage ‘elicitation method (Qi-fa-shi)’, is always encouraged.” However, he also refers to mock court as a student-organized activity, with some faculty guidance.<sup>13</sup> Professor Huang Jin has noted that in China some “consider legal education as quality education, some as academic education, some as professional education.”<sup>14</sup> Finally, Professor Cai Yanmin, a leader in China’s clinical education

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described the belief of Chinese participants in our program “that if clinical education is widely introduced, including simulations and the real case method, this will change the entire vision of legal education and lead to wider understanding of the value of the rule of law.” Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 55, 56 (2009). He adds that “Professor Teng [Hongqing, of South China University of Technology] insists that in order to move the idea of a just society from a romantic ideal to a reality, students need to come out of law school knowing rules and possessing the skills to combine facts with the rules to successfully deal with real cases.” Id. at 57.

<sup>11</sup> Guo Jie, *Reform of Legal Training and Education Pattern of LLB Programs – A Study and Experience from Northwest University of Political Science and Law*, in conference book for Chinese and American

Law Deans’ Conference, Beijing, April 1, 2005, p.22. See also Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. Legal Ed. 60, 88 (2009) (“From the U.S. perspective, the contemporary drive to institute ROL in China concentrates much of its resources, manpower, and funding on training the next generation of lawyers via methodologies developed in the U.S. with the intent that these lawyers will be agents of change toward a more open, rights-based China”).

<sup>12</sup> Author’s notes on presentations at Chinese and American Law School Deans’ Conference, Beijing, China, March 31-April 2, 2005.

<sup>13</sup> Wang Weiguo, A Brief Introduction to the Legal Education in China, <http://www.aals.org/2000international/english/chinaintro.htm>.

<sup>14</sup> Huang Jin, The Structure of Legal Education in China, <http://www.aals.org/2000international/english/china.htm>.

movement, argued: "Constructing clinical legal education programs in China is not a denial or replacement of the current Chinese legal education, but a reform and improvement of it. Therefore, the Chinese legal education shall formally incorporate clinical legal education into its curriculum."<sup>15</sup> This emphasis on experiential education, while an abrupt change from most current education in Chinese law schools, may not be foreign to Chinese culture, as exemplified by this aphorism attributed to Confucius: "I hear and I forget. I see and I remember. I do and I understand."<sup>16</sup>

Taking our cue from these Chinese scholars, our program undertakes to educate the educators. Experiential legal education is not intuitive or easy, and its success depends upon the existence of educators who understand the theories and methods of delivering lawyering skills. U.S. professors initially developed theories and methods through trial and error, interdisciplinary research, and sharing of information.<sup>17</sup> U.S. clinicians formed the Clinical Legal Education Association and the Clinic Section of the Association of American Law Schools, created the Clinical Law Journal, and wrote books and articles grounded in theory. In that process, "[c]linicians have developed a very strong sense of community with one another."<sup>18</sup> The American Association of Law Schools offers conferences and five-day workshops that provide training to clinicians. Some schools, such as Yale Law School and Georgetown Law Center offer two-year fellowships to lawyers who wish to become clinicians.<sup>19</sup> However, there is little other formal training of U.S. faculty in experiential legal education. Our program was based on our belief that it is feasible and desirable to provide such education to law faculty members in general, including those from Chinese law schools.

Our program is designed to create multiplier effects: Chinese faculty trained in phase I of the program are now educating other Chinese faculty in phase II. All the trained faculty use experiential methods to teach their students. In addition, Chinese professors who have completed our training program can then spread experiential education in other ways, such as writing books and articles and creating simulation case files. This approach is similar to prior activity by the Ford Foundation, and the Committee of Chinese Clinical Legal Educators, as well as Yale, Columbia,

<sup>15</sup> Cai Yanmin, *The Key Issues in the Institutionalization of the Clinical Legal Education in China*, materials from Chinese and American Law School Deans' Conference, Beijing, China, March 31-April 2, 2005.

<sup>16</sup> Quotation #25848 from Laura Moncur's Motivational Quotations, <http://www.quotationspage.com/quote/25848.html>, viewed on January 25, 2010. See David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3 (2009). Another author quotes Confucius as saying: "What I hear, I forget. What I hear and see, I remember a little. What I hear, see and do, I acquire some knowledge and skill. What I hear, see, do and discuss with another, I begin to understand." Jay Pottenger, *The role of [clinical] legal education in legal reform in the People's Republic of China: chicken, egg --- or fox?*, 6 Int'l. J. Clinical Legal Educ. 65, 73 (2004). Another version, attributed to an ancient Chinese proverb, is "Tell

me, I forget. Show me, I may remember. Involve me, and I understand." Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 Clinical L. Rev. 37, 50 (1995).

<sup>17</sup> See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, 91-95 (John Wiley & Sons 2007).

<sup>18</sup> Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 Howard L. J. 31, 44 (1993).

<sup>19</sup> See [http://www.law.yale.edu/documents/pdf/Cover\\_Fellowship.pdf](http://www.law.yale.edu/documents/pdf/Cover_Fellowship.pdf) for a description of the Yale fellowships. The Georgetown fellowships are meant "to provide highly motivated lawyers the chance to develop skills as teachers and legal advocates within an exciting and supportive educational environment." <http://www.law.georgetown.edu/clinics/fellowships.html>, viewed on March 4, 2010.



Georgetown and other Law Schools.<sup>20</sup> It differs from other prior U.S. involvement in Chinese legal education, which largely consisted either of U.S. teachers teaching Chinese law students or of U.S. entities funding programs they deem beneficial. A multiplier program aims for self-sustaining long range effect, by emphasizing the creation of a cadre of Chinese academics who have participated in creating experiential curricula based on Chinese needs and circumstances.<sup>21</sup>

After receiving the US AID grant, we held a planning session with our partner schools at Zhejiang Gongshang University in Hangzhou in December 2006. We had recruited one U.S. partner, American University's Washington College of Law, which offers one of the top clinical programs in the United States. Our Chinese partner schools covered a spectrum: China University of Political Science and Law is one of China's top law schools and had created several clinics in 2004 with assistance from the Ford Foundation. Zhejiang Gongshang University (ZGU) is a provincial university whose law school, operating under a dynamic relatively young Dean, Qingjiang Kong, is firmly committed to becoming a leader in experiential education. It had formed Zhejiang Province's first legal clinic in 2005, on an experimental basis. South China University of Science and Technology (SCUT) is recognized by the Chinese government as a “key university” and has a fairly new law school and clinical program, some of whose faculty shows great interest in experiential education. While all three Chinese partners already offered their students a mock trial program, this programs was voluntary, not for credit, and teachers were also volunteers.

The planning session was an essential first step in creating relationships and in educating one another on our respective legal and educational systems. We emphasized from the outset that our program was to be a Sino-US collaboration, not a top down program from the U.S. to China.<sup>22</sup> The bulk of the meeting was devoted to presentations by Chinese legal educators and judges on the current state of Chinese legal education and on the Chinese legal system, followed by questions

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<sup>20</sup> For example, in 2000 Chinese and U.S. clinical educators conducted a one week training conference at Wuhan University, followed by an Autumn week long training at Yale and a December forum at Renmin University in Beijing. See Cai Yanmin and J.L. Pottenger, Jr., *The “Chinese Characteristics” of Clinical Legal Education*, in Frank S. Bloch, *The Global Clinical Movement: Educating Lawyers for Social Justice* 87, 92 (Oxford University Press 2010). Columbia law school adopted a “train the trainers” approach in 1979, and in 1983 the Committee on Legal Exchange with China (CLEEC) was formed and began bringing to U.S. law schools young Chinese law teachers for training. R. Randle Edwards, *Thirty Years of Legal Exchange with China: The Columbia Law School Role*, 23 *Colum.J.Asian L.* 3, 10-12 (2009). In 1997 a U.S.-China summit meeting led to the adoption of a Joint Statement providing for cooperation between the two countries in the field of law, which led to a conference of law deans on expanded cooperation on legal education. Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 *Wm & Mary Bill Rts. J.* 603, 613 (2002-3). See also the testimonials to the Yale China program, at <http://www.yalechina.org/testimonials.php?Id=10&SubId=95>, viewed on May 14, 2010.

<sup>21</sup> An early study of clinical programs in China distinguishes between reductive and pragmatic strategies. In a reductive strategy “we know at the commencement of the developmental process what the institution being ‘developed’ should look like after that development is completed.” A pragmatic strategy makes “the discovery of developmental paradigms the goal of the project, rather than a prior (and hence ideological) condition for the project.” The reductive strategy focuses primarily on training, while pragmatic strategies focus more on discourse. Michael William Dowdle, *Preserving Indigenous Paradigms in An Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *Fordham Int'l. L.J.* S56, S59, S73-S74 (1980). Our program emphasizes the pragmatic strategy, recognizing, though, that this is a matter of degree rather an absolute.

<sup>22</sup> The program is consistent with the premise “that legal education reform in China proceeds by the ‘pull’ of domestic actors more than the ‘push’ of external reformers.” Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 *J. Legal Ed.* 60, 62 (2009).

from the U.S. participants. When the U.S. participants stressed that we were not there to tell Chinese educators what to do, Chinese legal scholars responded that the U.S. professors were the experts on experiential education and that Chinese law schools wanted us to tell them how to provide it.

Our meeting also exposed disagreements among the Chinese about the relevance of teaching trial skills such as cross examination and opening statements and closing arguments. Some welcomed that emphasis, arguing that the judge-centered civil law system that governed Chinese trials was gradually giving way to a more adversarial system; others saw no evidence that that was happening. All agreed, however, on the basic proposition that Chinese legal education needed to include clinical and professional skills courses – learning by doing, and abandon its pervasive reliance on the lecture system. At the same time, however, there was general agreement with the sentiment subsequently expressed by a leading Chinese scholar: “[W]e should not take a model deeply embedded in the historical, institutional, theoretical, and discursive contexts of the West, decontextualize it, and accept it uncritically as the standard of reference for China’s experience.”<sup>23</sup>

We continued dialogue with our Chinese partner schools during week-long visits to each. On-site visits not only enhanced the building of relationships, but enabled further exchange about the objectives and methods of the program and provided greater understanding of the existing curriculum and of possibilities for change. We were also able during these visits to interview applicants for the LL.M. programs described below. During this trip we also learned about other important players, such as the CCCLE, the Ford Foundation, Yale-China, the American Bar Association Rule of Law project, International Bridges to Justice, the Asia Foundation, and the Temple Law School program. Each of them has provided us with insights into the needs of Chinese legal education. Finally, we had the benefit of a Board of Advisors, half of them nominated by our Chinese partner schools; we were able to meet with most of our advisors during this trip. They include scholars, judges, practitioners, and a consultant and have provided helpful suggestions and insights, as well as lending legitimacy in the eyes of Chinese educators.<sup>24</sup>

## II.

Our program emerged from this crucible by creating three distinct platforms for educating the educators.

1. Pacific McGeorge School of Law created an LL.M. in Experiential Law Teaching.

Over the course of three years eight Chinese law teachers will have earned this LL.M. The heart of the LL.M. is found in a seminar on teaching methods and in

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<sup>23</sup> Zhu Suli, *The Party and the Courts*, in Randall Peerenbaum [ed.], *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, 52, 65 (Cambridge Univ. Press 2010). See also, Julie Davies, *Methods of Experiential Education: Context, Transferability and Resources*, 22 *Pacific McGeorge Global Bus. & Devel. L.J.* 21 (2009) (noting the need to avoid the unsuccessful effort of the 1950s and 1960s to spread the U.S. Law and Development Movement to other countries); Matthew S. Erie, *supra*, at 87, 95 (noting the need for joint PRC-U.S. training programs to cultivate grassroots legal transplants).

<sup>24</sup> For example, at the January 26, 2008 meeting of the Board of Advisors, we discussed how to improve the summer workshops by creating material more adapted to Chinese needs and by use of Chinese faculty as some of the trainers. Other topics included the need to stress legal ethics and the possibility of using part of the workshop time for the trainees to develop simulation materials. All of these suggestions were incorporated in later trainings.

a thesis requirement; enrollees also take lawyering skills courses and will shadow clinical law teachers. The theses typically discuss the applicability of experiential techniques to a Chinese law school course, including concrete plans or case simulations. We also have sent three Chinese law teachers to receive an LL.M. from American University's Washington College of Law (WCL). These students worked extensively with WCL's clinical faculty and wrote theses on clinical education.

2. Workshops in China for Chinese law school faculty members. We have held two three- week summer workshops, a two-day workshop, and a one-week winter workshop in which numerous Chinese faculty have interactively learned how to teach clinics and lawyering skills such as persuasion, interview, examination, negotiation. In the first two workshops half the participants studied clinical education and half studied professional skills education. In subsequent workshops we have merged the teaching of these two forms of experiential education.
3. Two scholarly conferences of Chinese and U.S. faculty, focused on experiential education in China. The papers from the first conference have been published and the papers from both are available on-line, in both Chinese and English.

Within these platforms our primary method of educating the educators is learning by doing. After initial discussion of the objectives of clinical and lawyering skills legal education, the teaching proceeds through three stages: First, the trainees participate in simulations – role plays and demonstrations – taking the role of law students. The simulations themselves use a tripartite method: students describe objectives, engage in the simulation, and then reflect on both what worked and what didn't work to achieve the objectives.<sup>25</sup> Second, they learn to teach students experientially, through meta-simulations involving other participants playing the role of students, in which they evaluate and critique and elicit reflection, with feedback from the trainers.<sup>26</sup> After progressing from what we teach to how we teach it, the third step is to enlist the Chinese trainees as trainers, who teach the “what” and the “how” to other Chinese law faculty. These skills are taught in various contexts, including clinical seminar discussion, case rounds, one-on-one supervision, client counseling, negotiation, arbitration, legal writing. Throughout this process we encourage discussion of the objectives of experiential education and of which techniques best serve those objectives in the context of Chinese law schools.

The U.S. faculty began with expertise in clinical and lawyering skills education, but not in Chinese law or language. Similarly, the written materials with which we were familiar were U.S.-centric. For our first advocacy training we got permission from the National Institute of Trial Advocacy to adapt one of its case files into the context of an arbitration governed by the rules of the Chinese. We used an arbitration rather than a court case because of our lack of expertise in Chinese judicial procedure. The rules of the China International Economic and Trade Arbitration Commission (CIETAC), a Chinese arbitral body, are similar to other international western arbitration rules.

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<sup>25</sup> The reflection may follow the feedback model described in Beryl Blaustone, *Teaching Law Students to Self-Critique and to develop Critical Clinical Self-Awareness in Performance*, 13 Clinical L. Rev. 143 (2006).

<sup>26</sup> For illustrations of these techniques, view the video at [http://www.mcgeorge.edu/Experiential\\_Education\\_in\\_China/Curriculum\\_Materials/DVD\\_Content.htm](http://www.mcgeorge.edu/Experiential_Education_in_China/Curriculum_Materials/DVD_Content.htm).



Both our clinical and advocacy trainees, however, became involved in creating experiential exercises within the Chinese context. For example, in our first clinical workshop, the Chinese trainees created a simulation in which the “clients” brought the “student practitioners” fruit and a red envelope containing cash. The trainees playing the role of supervising “professors” of the clinic then guided the “students” through reflections on what to do with the fruit [a gift to them] and the envelope [intended as a gift to the judge].<sup>27</sup> In the second clinical workshop, students interviewed a real client in front of the trainees and then faculty guided them through reflections on the goals and techniques of the interview. In the second advocacy workshop, trainees created simulation case files suitable for use in Chinese law schools, and those five case files were subsequently published.<sup>28</sup>

We ended each day by asking participants to fill out a “two-minute wrap-up,” and we reviewed the completed forms each evening. The form asked for a rating of the day’s work, an explanation of the rating, and what questions remain unanswered regarding the day’s topic. This enabled us to adjust the following day’s session to address unanswered questions. Finally, the addition of Chinese trainers after the first year enhanced our ability to provide training that would be optimal for Chinese trainees.

### III.

We have faced two types of challenges: challenges based on difference and challenges that flowed from the type of experiential education we are teaching. The differences are many: the legal systems, the educational systems, the languages, the cultures.

#### A.1.

The legal systems differ in several ways. China mainly follows the civil law system, while the U.S. is a common law system. Case law, thus, assumes a much less important role in China than in the U.S. China, like most civil law jurisdictions, uses an inquisitorial procedure while the U.S. uses the adversary system. China lacks compulsory process of witnesses, so usually the record in a case is primarily paper rather than oral testimony. As a practical matter, a Chinese clinical student facing possible litigation will need to focus on how to muster facts in a paper record and will give less emphasis to live witness development. We decided, though, that the job of the lawyer in both systems is one of problem solving and persuasion and that if we taught about basic advocacy techniques with which we were most familiar, such as direct and cross examination and opening statements and closing argument, the Chinese professors would be able to adapt those techniques to the Chinese system.<sup>29</sup> They generally began learning these techniques with some skepticism, but eventually came to find them very valuable and transferable. The key to transferability is adaptation

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<sup>27</sup> Described in Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 55, 59 (2009).

<sup>28</sup> Luo Wenyan and Brian Landsberg (eds.), *Representing the Client*, [in Chinese], Zhejiang Gongshang University Press 2008.

<sup>29</sup> This conclusion was supported by limited observation of a Chinese trial and of Chinese law school mock trials. My notes on one such mock

trial in May 2007 say: “Observed two hour moot court criminal trial. On one hand, attorneys were very active and seemed like adversaries; on the other hand, there were only three witnesses, and their examination was quite brief. Quite a bit of time taken arguing facts and law and presenting evidence such as the weapon and expert reports [experts don’t testify]. A student journalist took pictures for an internet report on the trial. Organizer will give me a disc of the moot court. One professor came in briefly....”

to local circumstances. “The significance and nature of such skills as fact investigation, litigation, and alternative dispute resolution ... differ in ways that Chinese clinicians need to consider when developing their own course syllabi.”<sup>30</sup>

China’s legal system is also, at least nominally, a Communist legal system. The legal system must act in harmony with the Communist Party, while the United States’ legal system reflects capitalist and democratic values. This leads to different conceptions of the rule of law. China officially embraces the rule of law.<sup>31</sup> What that means is not at all clear and may differ from one person to the next. Jerome Cohen has pointed out that this means a “political-legal” system in which “to an unusual extent, ‘politics takes command,’ as the slogan puts it, at least in the many types of cases the state regards as ‘politically sensitive.’”<sup>32</sup> Moreover, even though China’s legal history is millennia longer than that of the United States, China had to reinvent its legal system after the Cultural Revolution. As Jianfu Chen has pointed out, “rule of law” is largely a Western notion, and modern China has used the term “Yifa Zhiguo, Jianshe Shehuizhuyi Fazhi Guojia”, or “ruling the country according to law and building a socialist country governed by law.”<sup>33</sup> Jiang Ping, noting that the story of rule of law in China has been two steps forward and one step backward, also tells us that “more and more people are genuinely interested in the fate of China’s rule of law.” He adds that “lawyers definitely don’t only want to make money; many lawyers have come to understand and think about our country’s destiny, the future of the rule of law, and the protection of human rights.”<sup>34</sup>

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<sup>30</sup> Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 140 (2005). Jay Pottenger has observed that “the addition of ‘Chinese Characteristics’ to clinical methodology is most crucial, most delicate in the area of Legal Ethics and Professional Responsibility,” which are key to our objective of promoting rule of law. Jay Pottenger, *The role of [clinical] legal education in legal reform in the People’s Republic of China: chicken, egg – or fox?*, 6 Int’l. J. Clinical Legal Educ. 65, 72 (2004).

<sup>31</sup> See Hu Jintao, at n. 10, *infra*. Premier Wen Jiabao spoke to students at China University of Political Science and Law in December 2009. He described rule of law this way: “What is the spirit of rule of law? Briefly speaking, I think it is to create a world ruled by law (法治天下), as is inscribed on the rock near the gate of your university.... ‘To create a world ruled by law’ indicates that law is more powerful than the world. Therefore, I can say that the world which is overriden by law shall be ruled by law. I think such a vivid statement grasps the core of the spirit of rule of law. To specify the spirit, I want to say five points. First of all, the dignity of the constitution as well as laws transcends all; second, all people are equal before the law; third, all organizations and institutions shall undertake activities within the scope of the constitution and laws; fourth, laws shall be made in a democratic manner and be publicized and popularized among the masses; last but not least, see to it that there are laws to go by, the laws are observed and strictly enforced, and law-breakers are prosecuted. A

Chinese saying goes that ‘the difficult lies not in legislation, but in implementation’ (天下之事不难于立法, 而难于法之必行). If laws are not fully observed, why should we have them?” Quoted at [http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1245221141523299&infoid=1261726002105485&title=Premier Wen Jiabao Discusses Rule of Law with University Students](http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1245221141523299&infoid=1261726002105485&title=Premier+Wen+Jiabao+Discusses+Rule+of+Law+with+University+Students), viewed on Feb. 16, 2010, attributed to Legal Daily (December 4, 2009)(Editor in Charge: Liu Yi; Translator: Jiang Jianfeng).

<sup>32</sup> Jerome A. Cohen, *China’s hollow ‘rule of law’*, CNN Opinion, Dec. 31, 2009, <http://www.cnn.com/2009/OPINION/12/31/cohen.china.dissidents/index.html>, viewed Feb. 1, 2010. See also a study of the treatment by the courts and the party of “Married out women” in Guangdong Province, which “illustrates the complexity of the judicial decision-making process ... where elements of law, power, and politics all come into play.” Xin He, *The Judiciary Pushes Back: Law, Power, and Politics in Chinese Courts*, Peerenbaum (ed.), *supra*, 180, 193.

<sup>33</sup> Jianfu Chen, *Chinese Law: Context and Transformation*, 694-95 (Martinus Nijhoff 2008).

<sup>34</sup> Jiang Ping, *China’s Rule of Law is in Full Retreat*, February 21, 2010, anonymous translator. Original speech is at <http://sunguodong2002.blog.sohu.com/144164134.html>, viewed on March 3, 2010.

China's courts do not have the history of independence that U.S. courts have achieved, and they continue to suffer from a large number of poorly qualified judges<sup>35</sup> and from corruption<sup>36</sup>. Concepts such as the lawyer's duties of zealous advocacy and confidentiality may not apply in China.<sup>37</sup> In our program we have taken the position that exposure to the Western legal systems' values of due process and transparency and lawyer-client relations are central to the rule of law. Accordingly, their adoption would help the Chinese law professors educate future lawyers and judges to respect the rule of law. Participants read materials about the lawyer-client relationship and discussed how to supervise clinical students in their representation of clients. Our stress on the concept of client centered lawyering met initial resistance, partly because it seems inconsistent with a hierarchy that places the lawyer above the client<sup>38</sup> and partly because the Chinese professors thought it "meant that American lawyers did whatever their clients wanted them to do." However, after hearing that the concept stands for assisting "clients in making decisions in which competing values of the client are at stake," the Chinese professors are reevaluating whether client centered lawyering is consistent with Chinese values.<sup>39</sup> For our August 2009 training, Professor Xu Shenjian of the China University of Political Science and Law created a power point presentation on client centered lawyering, an indication that the concept is taking hold in China. Discussion of theory of the case underscored that the attorney must be able to tell the client's story in a sympathetic and convincing way.

## A.2.

We also had to recognize important differences between the educational systems. One set of differences is in the students. As in much of the world, law is an undergraduate degree in China, though an increasing number of Chinese law graduates go on to study for an LL.M or J.M degree.<sup>40</sup> Of course, in the United States it is a graduate program. The Chinese government describes the legal education system as one that "combines the education of law majors and vocational

<sup>35</sup> Id., at 679-80.

<sup>36</sup> Chief Justice Wang Shengjun has observed that nearly 800 court officials were punished for violating laws in 2009. Prosecutor-General Cao Jianming noted that prosecutors would make efforts to "resolutely punish corrupt act in the judicial sector to purify the judicial team and safeguard integrity and justice." *Top China judge bangs gavel: We won't abide dirty officials*, Shanghai Daily, March 12, 2010, p. A3. See also, Nanping Liu, *Trick or Treat: Legal Reasoning in the Shadow of Corruption in the People's Republic of China*, 34 N.C. J. Int'l. L. & Com. Reg. 179 (2008).

<sup>37</sup> See Daniel C.K. Chow, *The Legal System of the People's Republic of China in a Nutshell*, 250-258 (West 2009) (citing problems of independence of lawyers, professional competence, and professional ethics).

<sup>38</sup> A related point is that "the lack of attention to client interests may reflect both a traditional lack of emphasis on individuals in the Chinese legal system, and a government view that legal aid serves the state and that individual and state interests

cannot be divorced." Benjamin L. Liebman, *Lawyers, Legal Aid, and Legitimacy in China*, in William P. Alford, *Raising the Bar: The Emerging Legal Profession in East Asia*, 311, 346 (Harvard Univ. Press 2003).

<sup>39</sup> Elliott Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 55, 61 (2009). Client centered lawyering was already a tenet of the Wuhan University clinic. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 136 (2005).

<sup>40</sup> See Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 39 J. Legal Ed. 60, 68 (2009), stating "It is the goal of the MOJ [Ministry of Justice] and most educators to transform the study of PRC law... to a post-graduate professional school..."

education in law.”<sup>41</sup> Many undergraduate law students will never practice law or serve as judges or procurators. Most U.S. law students become lawyers. These differences suggest the need for adjustment of the U.S. methods in China. Indeed, this is a key area of global adaptation and recognition of differences.<sup>42</sup> It has been suggested that undergraduates are “too young to think for themselves and need first to accumulate a corpus of knowledge.”<sup>43</sup> The opposing view is that learning theory places both upper division undergraduates and J.D. students “squarely within the ‘adult’ cohort for mature learning purposes.”<sup>44</sup> The experience of our Chinese partners reflects that properly supervised undergraduates can successfully represent clients in legal matters.

Because Chinese law students are in a four year program, there is more opportunity to sequence experiential courses; for example, lawyering skills courses in client interviewing, negotiation, mediation, and arbitration or trial could be made prerequisites to clinical courses. Such sequencing would reserve clinical courses for upper division students, who will be more mature and therefore more likely to be able to interact appropriately with clients. The more difficult question is whether the need for experiential legal education is affected by the existence of a sizable enrollment of students who will never serve in law-related jobs.<sup>45</sup> One answer is that the problem solving skills acquired in experiential courses have broad application. Another is that there is student demand for lawyering skills and clinical courses. Many students do enter law-related jobs. They want professional skills education, and potential employers want them to have professional skills.<sup>46</sup> A third is that taking a clinical course may well motivate a student to become a lawyer, because of the satisfaction that can come from representing a client and because the clinical work exposes

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<sup>41</sup> PRC State Council White Paper, *China’s Efforts and Achievements in Promoting the Rule of Law*, Feb. 28, 2008, viewed on April 18, 2010 at <http://china.usc.edu/ShowArticle.aspx?articleID=962>.

<sup>42</sup> See Frank S. Bloch and M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents From India and the United States*, 13 *Clinical L. Rev.* 165 (2006).

<sup>43</sup> Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Education*, 10 *German Law Journal* 823 (2009), quoting Alain Lempereur, *Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education*, 3 *Harvard Negotiation L.Rev.* 151, 164 (1998).

<sup>44</sup> Wilson, *supra*, at 834.

<sup>45</sup> See Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 *Harv. L.Rev.* 2134, 2144, citing statistics showing less than 15% of law graduates from a high ranking law school finding law jobs.

<sup>46</sup> Major employers in Beijing, both private and public, say that they want to hire lawyers who are already able to handle legal matters independently. See Wang Rong, *On the Role and Significance of Advocacy and Clinical Legal Education in China*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan.

25, 2008, slide 7, [http://www.mcgeorge.edu/Documents/centers/global/usaidd/Rongs%20powerpoint%20\(word%20file%20translated\).pdf](http://www.mcgeorge.edu/Documents/centers/global/usaidd/Rongs%20powerpoint%20(word%20file%20translated).pdf). A survey of law school students in Zhejiang Province “reflects that legal skills are eagerly required by law school students....” Pei Bei, *The Expectation of Legal Skills in Chinese Legal Education*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan. 25, 2008, <http://www.mcgeorge.edu/Documents/centers/global/usaidd/Pei%20Bei%20English.pdf>. A Pacific McGeorge professor who taught an advocacy course at China University of Political Science and Law observed, “it would be impossible to overstate the enthusiasm with which all 16 Chinese law students embraced our full-on experiential, simulation-based, American-style trial-skills course.” He concluded, from having observed similar results in China, Italy, and the United States, that “teaching skills in a learning-by-doing ... setting appears to be universally effective.” Jay Leach, *Content and Design of Advocacy Education Courses in Chinese Law Schools: A Proposed Template*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan. 26, 2008, <<http://www.mcgeorge.edu/Documents/centers/global/usaidd/Leach.%20China.Report.pdf>>

students to societal problems and reveals the need for legal representation. In addition, of course, the students have enrolled in a law school, and it seems appropriate for a law school to train lawyers. Finally, these objections to lawyering skills education at the undergraduate level have no application to LL.M. and J.M. education.

Any program in China must confront the daunting scale of the country, so unlike the United States. With over 550 law schools,<sup>47</sup> many of which are quite new to legal education, how can a relatively small initiative make a substantial impact? We decided that it would be impossible to quickly bring change to a large number of law schools. Instead, we opted to try to have a large impact on a few schools, by limiting our initial program to three partner schools and training ten faculty members from each school. We believe this strategy has paid off. Practitioners of experiential legal education are embedded in those three schools and the future of practical lawyering education seems secure there. All three have expanded their clinical offerings. An extension of our grant enabled us to increase to five additional schools participating in the program, with each school sending six faculty members. Chinese professors from the first phase of the program are now trainers in this Phase II. As more Chinese faculty become proficient in training other faculty in experiential education techniques, we hope the methods will spread further.

There are also curricular and teaching method differences. Law schools tend to adopt the required courses listed by the Ministry of Education, so they are pretty much in curricular lock step with one another. No experiential courses are required,<sup>48</sup> but the Ministry of Education has approved legal clinics as elective courses and is considering whether to encourage practical education in law schools more actively.<sup>49</sup> Students are expected to acquire lawyering skills during their fourth year of law school, through three or four month externships with lawyers, courts, or procurators. These assignments have often been of minimal value, however.<sup>50</sup> The lecture method dominates

<sup>47</sup> See Liu Xiaobing, *Clinical Legal Education and Legal Aid*, China Legal Education Research 2008 #4, p. 73 ff. (translated by Lei Yu). Over 600 institutions grant law degrees; some are university departments rather than law schools. See Cai Yanmin and J.L. Pottenger, Jr., *The "Chinese Characteristics" of Clinical Legal Education*, in Frank S. Bloch [ed.], *The Global Clinical Movement: Educating Lawyers for Social Justice* 87, 89 (Oxford University Press 2010); PRC State Council White Paper, *China's Efforts and Achievements in Promoting the Rule of Law*, Feb. 28, 2008, viewed on April 18, 2010 at <http://china.usc.edu/ShowArticle.aspx?articleID=962>.

<sup>48</sup> Required courses are constitutional law, jurisprudence, criminal law, civil law, economic law, criminal procedural law, civil procedural law, administrative law and administrative procedural law, commercial law, intellectual property law, public international law, private international law, international business law, history of Chinese legal system, environmental and resource preservation law, and labor and social security law. Li Huimin, Hu Chenggong and Song Guolei, *Problems and*

*Suggestions: On the Development of the Core Curriculum for Chinese Law Schools*, China Legal Education Research, 2008, #4, 138 [translated by Lei Yu]. "None of the fourteen courses contains practical curricula or the teaching of lawyer-practice skills." Gerard J. Clark, *An Introduction to the Legal Profession in China in the Year 2008*, 41 SUFFOLK U. L. REV. 833, 841 (2008).

<sup>49</sup> Cai Yanmin and J.L. Pottenger, Jr., *supra* at 99.

<sup>50</sup> Zhu Suli, *supra*, 78-79. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 127 (2005) ("the two- or three-month shixi period often becomes a mere break for the students from their ordinarily frenzied class schedules"). The objectives of these brief externships are similar to the objectives of experiential classes, see Li Shuzhong, *supra*, 66, but without an academic element requiring reflection on what has been learned, the externships are unlikely to achieve those objectives.



Chinese law classes, while the Socratic method dominates in the United States.<sup>51</sup> Chinese law students have come to believe that the professor’s job is to answer questions, not to ask questions. Thus, they initially resist the more demanding methods that would require advance preparation and critical thinking.<sup>52</sup> Clinical legal education’s real-world, client-centered focus on facts and practice stands in stark contrast to the rest of the curriculum, with its virtually exclusive emphasis on rules, law, and theory.<sup>53</sup>

Clinical education is in its infancy in China, having begun at a few schools in the 1990’s.<sup>54</sup> It is now well entrenched in most U.S. law schools. Lawyering skills courses are virtually non-existent in China, but are found in most U.S. law schools; in China, mock trial programs are common but are not courses for credit. On the other hand the division that has developed in the United States between clinical education and lawyering skills education does not currently exist in China.<sup>55</sup> Chinese professors generally receive less recognition and pay for teaching experiential courses. The status of experiential education in China, in short, resembles its status in the United States until the 1970’s.<sup>56</sup> U.S. law schools went through a slow and uneven transition to a curriculum that includes lawyering skills and clinical legal education, creating teaching standards and techniques through trial and error and through dialogue among experiential education scholars. As with so much of Chinese society, more rapid change is possible in Chinese law schools, for several reasons. The Ministry of Education has encouraged higher education institutions to incorporate learning by doing.<sup>57</sup> Chinese legal scholars are familiar with the U.S. experience and they show high regard for U.S. legal education. Since the U.S. now has a mature, though still evolving, experiential legal

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<sup>51</sup> “The education model is ‘knowledge-centered,’ rather than ‘skill-oriented.” Setsuo Miyazawa, Kay-Wah Chan, and Ilhyung Lee, *The Reform of Legal Education In East Asia*, 4 Annual Rev. of Law and Social Science, 333, 335 (2008). However, Socratic dialogue has become more common in China in recent years. Matthew S. Erie, *supra*, at 77-79.

<sup>52</sup> This is based on my personal observation, while teaching a course in a Chinese law school. See also, Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 142 (2005) (describing a Chinese student who “insisted that he could not learn without the instructor answering his questions directly and resolutely”). However, many students adapt well to interactive learning techniques. See Patricia Ross McCubbin, Malinda L. Seymore, Andrea Curcio, and Llewellyn Joseph Gibbons, *Essay: China’s Future Lawyers: Some Differences in Education and Outlook*, VII Asper Review 293, 299 (2007).

<sup>53</sup> Cai Yanmin and J.L. Pottenger, Jr., *supra*, at 90.

<sup>54</sup> In the late 1980’s some Chinese law schools created law firms that provided legal services, and law school student unions began offering legal advice. However, these were extracurricular activities. Michael S. Dowdle, *supra*, at 175-176.

<sup>55</sup> See Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale Hum. Rts. & Dev. L.J. 117, 143 (2005).

<sup>56</sup> “[I]t is an undeniable fact that such forms of experiential teaching as the so-called legal counseling and service, social survey, clinical legal education, short-term internship, graduation internship are carried out in a nominal manner, without any efficient organization or administration....” Zhang Shengxian, *A Study on Experiential Teaching System for Law Undergraduates*, China Legal Education Research, 2008, #4, 47 [translated by Lei Yu].

<sup>57</sup> “Training on basic knowledge, theories and skills will be further emphasized. In the field of HE, the service profile for disciplines will be expanded and the teaching and training for application and internship will also be strengthened, so that teaching, research and social application can be integrated and the students’ capacity in analyzing and solving problems will be improved.” The 9th 5-Year Plan for China’s Educational Development and the Development Outline by 2010, [http://www.moe.edu.cn/edoas/en/level3.jsp?tablenameme=1242700904263396&infoid=1244084931385369&title=The 9th 5-Year Plan for China’s Educational Development and the Development Outline by 2010](http://www.moe.edu.cn/edoas/en/level3.jsp?tablenameme=1242700904263396&infoid=1244084931385369&title=The+9th+5-Year+Plan+for+China’s+Educational+Development+and+the+Development+Outline+by+2010), viewed on Feb. 17, 2010.



education, Chinese are very interested in adapting the U.S. methods to Chinese circumstances.<sup>58</sup> This has become obvious to us as we view the enthusiasm with which Chinese law schools have sought to become part of our program.

It has been suggested that some legal educators in the two systems may pursue different goals for clinical legal education: championing equal access and redressing inequality [United States] versus improving legal skills [China].<sup>59</sup> This both oversimplifies the two educational systems and creates a false dichotomy. Clinics in both countries promote the rights of the powerless and less privileged among us. Clinical students in both countries acquire both lawyering skills and an understanding of the legal needs of the poor. Of course, it might be possible to pursue one objective without the other. For example, a professor might agree for the clinic to take on a high impact case even though it has little pedagogical value. However, in both countries a properly run clinic will find cases that advance both objectives. As Michael Dowdle points out, law school clinics “often provide a legal aid function by providing legal services to persons who would not otherwise have access to them,” although “one of their principal foci is on pedagogy, and not simply on maximizing the reach and impact of their public service.”<sup>60</sup>

Language differences have presented some challenges as well. Only one of our U.S. faculty speaks Chinese and many Chinese trainees have little or no English language skill. Therefore, most of our activities in China have required interpreters.<sup>61</sup> It is important to use professional interpreters rather than rely on English. The main choice we had to make was between consecutive and simultaneous translation. We opted for consecutive, believing it would probably be more accurate and that the much higher expense of simultaneous translation was not warranted. Simultaneous translation would become especially difficult in the small group sessions which became the heart of our program. We did use the “whisper” system in small groups where the Chinese participants were engaged in learning exercises among themselves.<sup>62</sup> We discovered an unexpected advantage to

<sup>58</sup> See, e.g., Kong Qijingjiang, *Practice in Legal Education: International Experience and Chinese Response*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 35 (2009); Zhou Shiwen, *The Reform Strategy of Legal Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 69 (2009). Others recognize the need for professional skills training without specifically referring to use of U.S. legal education techniques. E.g., Li Shuzhong, *On Practical Teaching Modes: Experience from the China University of Political Science and Law*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 63 (2009); Zhu Suli, *An Institutional Inquiry into Legal Skills Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 75 (2009).

<sup>59</sup> “[T]he general direction of the post-transplant development of China’s clinical legal aid and education framework has been away from the dominant paradigms that heretofore informed our perceptions of clinical legal education in its foreign system of origin....” Michael W. Dowdle, *Completing Teubner: Foreign Irritants in China’s Clinical Legal Education System and the ‘Convergence’ of Imaginations*, in Penelope (Pip) Nicholson &

Sarah Biddulph, (eds.), *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, 169 (Martinus Nijhoff 2008). See also, Dowdle, *supra*, at 181; Sarah Biddulph, *Legal Education in the People’s Republic of China: The ongoing story of politics and law*, in Stacey Steele and Kathryn Taylor [eds.], *Legal Education in Asia: Globalization, change and contexts*, 260, 271 (Routledge 2010).

<sup>60</sup> Dowdle, *supra*, at 174.

<sup>61</sup> We conduct almost all classes in the U.S. in English [plus a couple in Spanish] and require Chinese professors who enroll in our LLM program to demonstrate English language ability, by TOEFL or IELTS score or by interview. Typically they find the first half of the first semester extremely challenging linguistically, but they gain fluency over time, and all have been able to complete the program satisfactorily, with some achieving high success.

<sup>62</sup> A variant on simultaneous translation, in the whisper system the interpreter whispers the translation to one or two non-speakers of the language.

consecutive translation: it gave time for difficult ideas to sink in, and for bilingual Chinese participants the repetition also enhanced understanding [though a few found it boring and a waste of time].

Language poses challenges in another way: some U.S. legal ideas are hard to translate. For example, we initially divided the program into a clinical component and an advocacy component. The word “advocacy,” however, proved impossible to translate. We had lengthy discussions with Chinese participants and interpreters on how to translate the word and could never find a suitable translation. Similarly, idioms, jokes, and metaphors often do not translate well.

This latter point is also related to cultural differences. Many jokes, idioms, and metaphors depend heavily on shared cultural understandings. A more serious cultural difference is that Chinese culture is much more hierarchical than U.S. culture. Respect (zunjing) for elders and persons with higher status, such as professors, leads to a reluctance to fully engage in discussion, because the younger person and the person in a lower status should not contradict the older and higher status person.<sup>63</sup> For example, we planned a role play, where a U.S. professor was to give a closing argument and a more junior Chinese professor was to demonstrate critique method. The U.S. professor told the Chinese professor what mistakes he would make in his closing argument, but even with that advance knowledge, the Chinese professor gave a critique that praised the U.S. professor’s performance.

We had been warned that our program would clash with other aspects of Chinese culture: the concept of face [*mianzi*], the emphasis on community rather than the individual, and the low value placed on independent thinking. In practice we did not find that these values clashed with our program. Properly presented critiques and self-reflection did not seem to raise issues of face, but instead seemed consistent with Chinese traditions from the time of Confucius.<sup>64</sup> Perhaps this is because we emphasized that critiques should not be sarcastic or belittling. Our classes rely to some extent on communal learning, and once freed from the constraints on independent thinking the Chinese participants enthusiastically embraced it.

Chinese and U.S. cultures tend to feature differing “perceptions of rules and relationships.”<sup>65</sup> For example, “Western legal systems focus most acutely on principles of law, while the traditional Chinese view is that such abstract principles are too mechanical and devoid of substance. Rather, the emphasis has been on conflict reduction and stability.”<sup>66</sup> Professors Wang and Young also describe Dr. Milton Bennett’s Developmental Model of Intercultural Sensitivity, reflecting that when exposed to these cultural differences, individuals go through a progression of reactions.<sup>67</sup>

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<sup>63</sup> See Matthew S. Erie, *supra*, at 79-80.

<sup>64</sup> According to one of his aphorisms, “These are my worries: not cultivating virtue, not teaching what have been learned, not moving toward what is known of righteousness, and not correcting what is wrong.” Another holds: “If you speak to a man very seriously, how can he not listen to you? Correcting is the most important thing. If you speak to a man in a friendly manner, how can he not be happy? Being able to examine is the most important thing. If a person seems happy, but he does not want to examine; or if a person is listening, but does not correct his mistake, for those people, I can do nothing.” Tom Te-wu Ma and Pan Zhiyong,

Confucius Said, 167 and 189 (Shanghai Worldwide Publishing Co. 2004).

<sup>65</sup> Francis SL Wang and Laura WY Young, *Cultural Differences and Legal Perspectives: Measuring Intercultural Interactions and Outcomes at the Summer Law Institute – Kenneth Wang School of Law, Suzhou, China*, in International Association of Law Schools, *Effective Teaching Techniques About Other Cultures and Legal Systems*, 53 (May 30, 2008).

<sup>66</sup> *Id.*, at 54.

<sup>67</sup> *Id.*, at 56, citing M.J. Bennett, *A development approach to training for intercultural sensitivity*, 10 Intl. J. of Intercultural Relations 179 (1986).

We noted some of these reactions in our training: initial denial, defense, minimization of differences, acceptance, adaptation, and integration. For example, some trainees initially resisted such concepts as client centered lawyering, persuasive argument, and non-directive supervision, but most ultimately found these to be useful concepts that could be transformed for use in Chinese legal education.

## B.

Another set of challenges flows from the type of experiential education we are teaching. Our workshops have been of varying length – two days, one week, three weeks. Our objective is to achieve “deep transfer,”<sup>68</sup> but that is not possible in a two day training. There we limited our effort, to simply provide introductions to various topics and lay a foundation for trainees. Even in the longer workshops, deep transfer can occur only if we limit the topics covered and give the participants ample practice of each skill.

U.S. law schools generally organize their curriculum based on an artificial and historically based division between clinical courses and persuasive lawyering courses. Our first two workshops followed this division, but it became increasingly clear that the overlap between the two exceeded the differences between them. Both teach negotiation, client interviewing, fact development, theory of the case, and courtroom skills. Both rely on reflection as a key teaching device. Both use simulations – clinical courses use them to prepare students for real clients and cases; lawyering skills rely on them exclusively. We decided to merge our consideration of clinical and persuasive lawyering in our workshops in 2009. One advantage of this merger is the opportunity to compare methods of learning by doing. NITA relies substantially on directive techniques, while clinicians typically rely more on self reflection. A related difficulty is finding the correct balance between directive and reflective techniques of educating the educators. Time constraints create pressure to use directive techniques, but discussion and reflection are particularly important when the issue is transferability of techniques to another country’s legal education system. It is generally accepted that we can achieve deeper learning with reflective techniques.

Our Chinese participants proved adept at adapting U.S. techniques to Chinese clinical education. For example, we presented the Blaustone six step method of feedback and reflection. Southwest University of Science and Technology Law School reported to us that they had adopted a six step model. The report described a divorce case in which the client had a poor reaction to their first meeting with the students:

“Our students were very frustrated by it and showed signs of giving up this case. Following these six steps, clinic teacher had a communication with students in time, they listened to students’ report on the meeting with the party, guided the student to analyze this meeting, first teacher let students find out their good performance in the meeting, and then let students reconsider the problems which caused the party to distrust them, finally students proposed a remedy for the further communication with the party, and established the sense of trust of the party. Through this feedback

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<sup>68</sup> Deep transfer is an important concept in learning theory, referring to long term lessons that stick with the learner and that the learner can apply to new situations. David A. Binder and Paul Bergman,

*Taking Lawyering Skills Training Seriously*, 10 *Clinical Law Review* 301 ( 2003); Ken Bain, what the best college teachers do, 27 (2004)[referring to deep learning].

mode, students successfully found the reasons for party’s distrust, and they finally got the trust through further communication with the party. Now with the cooperation of students and the party, this case goes well and this divorce trial will begin in April 23rd 2010.”<sup>69</sup>

#### IV.

What lessons have we learned from this program? Foremost, the core methodology of educating the educators works. Our trainees have enthusiastically embraced the program, in evaluations,<sup>70</sup> by incorporating into their own teaching the methods they learned in the program,<sup>71</sup> and in books and articles they have written.<sup>72</sup> The independent evaluator who has reviewed our program, Professor Frank Bloch of Vanderbilt Law School, has concurred in the value of this methodology.<sup>73</sup>

Second, clinical and persuasive lawyering classes are two branches of the same tree: learning to be

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<sup>69</sup> Translated by Wang Yongmei, e-mail to Brian Landsberg, April 2, 2010.

<sup>70</sup> The number rankings from the trainees are always quite high. For example, in response to the question whether the 2008 summer workshop had achieved its objectives, 20 replied yes and 3 replied no [ten others did not respond]. As to how clear the objectives of the workshop were, 21 said excellent and 3 said adequate. More informative, perhaps, are narratives. A former associate dean of Zhejiang Gongshang University Law School wrote: “For Chinese legal experiential education, the core concept of American experiential education—learning by doing and the teaching methodologies and techniques, such as simulation, demonstration, roleplay and critique, are really worth being learned from. Wonderful experience!” E-mail from Luo Wenyan to Brian Landsberg, Feb. 8, 2010. A professor at the China University of Political Science and Law wrote: “Right now, China is paying great attention on the reform of legal education. In this context, I believe teaching of legal skills including advocacy skills will be more and more important. This LLM program just provides training for the law professors who had interest in teaching of advocacy skills, thus I sincerely recommend you to this LLM program.” E-mail from Dong Jingbo to Brian Landsberg, Feb. 7, 2010.

<sup>71</sup> See text, 1-2, *supra*, re Dong Jingbo’s courses. See text, *infra*, re Liu Jianming’s clinic. All who responded to the survey regarding the 2008 summer workshop said it would have an impact on their teaching. Typical responses: “change critique procedure,” “add ADR as an individual class,” “use simulation,” “teach students more legal and advocacy techniques,” “how to supervise students.”

<sup>72</sup> E.g., Luo Wenyan, and Liu Jianming, *Falu Jineng Zonghe Shixun* [Comprehensive training on legal skills], Zhejiang Gongshang University Press, 2009;

Luo Wenyan & Brian Landsberg, *supra*, n. 28; Liu Xiaobing, *Clinic Legal Education and Legal Aid*, *China Legal Research* 2008, No. 4, 73; Dong Jingbo, *Research Practice Teaching of International Law*, *China Legal Research* 2008, No. 4, 127.

<sup>73</sup> For example Professor Bloch’s report on the December 2009 training noted: “From the beginning, the Project has sought to address the relevance of US-based materials and US-oriented methods to the Chinese context. As has been the case throughout, many of the Chinese participants expressed great interest in learning about US-style clinical and advocacy skills teaching despite differences between US and Chinese legal systems (and between US and Chinese legal education). Many examples of Chinese clinical and skills instruction were cited, both in the training and by participants during large and small group discussions. Moreover, discussion along these lines seemed more nuanced during this training in that greater attention was given to how the essence of what is taught in the US—as opposed to the specifics—might best help Chinese law teachers develop a clinical and skills curriculum for training a new generation of modern Chinese lawyers. Two examples of this were the session on legal argument that brought out ways in which largely similar simulations could be used to prepare students in both countries despite specifically identified difference between US and Chinese law practice, and the session on “persuasive lawyering” that facilitated cross-system discussion of the lawyering process, how to teach about what lawyers do, and how clinical and skills training in law schools might influence the transition to more adversarial legal process in China.” Frank S. Bloch, *Report to The University of the Pacific McGeorge School of Law on USAID Rule of Law in China Project* (October-December 2009), 11-12.

an ethical and skilled legal professional. Properly sequenced they reinforce not only the lessons that the other class taught but also the lessons of traditional legal knowledge courses. Persuasive lawyering classes prepare students for clinical classes, as well as concretizing lessons learned in traditional legal knowledge classes. Clinical classes cement the lessons learned in the persuasive lawyering classes, further concretize traditional lessons, and deepen sense of professional values. Moreover, as Pamela Phan has noted, perhaps “the Chinese system of legal education holds greater potential for integrating doctrinal and clinical methods than its American counterpart,” both because of the broad definition Chinese educators give to “clinical education” and “because Chinese clinicians are also educators in doctrinal subjects.”<sup>74</sup>

The U.S. law schools may have taken a wrong turn when most of our schools separated the two. Thus, we have learned about ourselves in the course of teaching the Chinese professors. We have learned to consider the relationship of the clinical, lawyering skills, and doctrinal courses in a systematic way. We have learned to consider the deeper lessons that each type of course offers. We have learned to ask ourselves questions about the most effective teaching methods. For example, when is it appropriate to provide directive critiques of student performance and when is it more effective to simply raise questions upon which the students should reflect?

Other lessons are reflected in the discussion above. We need to be constantly aware of the tension between directive and reflective techniques of teaching/learning. We need to take care in selecting trainees. For LLM programs, English language competency is essential. Critical mass at a specific law school seems essential. Evidence of commitment to experiential education is helpful. We also need to be careful in our choice of terminology. For example, we are now referring to persuasive lawyering rather than advocacy. The differences between the two legal systems require adjustment from US, but the basic skills required are the same in both systems, and we should not overstate the extent of the differences. Properly delivered critiques do not cause undue loss of face. We should not be over-concerned over face. To the extent possible, we should put Chinese law professors in charge. Let them go first rather than trying to have them critique a U.S. professor.

At our workshop in 2008 we merged the clinical and advocacy groups for the final sessions and asked the Chinese participants to comment on what they had learned and what they planned to do with it. Two responses, as reflected from my notes, nicely capture the gist of their comments:<sup>75</sup>

Advocacy skill is like the field test of driving and clinical course is like the live road test. We plan future reform to combine such skills as arbitration law with clinical courses. We need multiple strategies, not a standardized one. In the first stage in China, let multiple models exist.

We should allow various models of experiential learning. We want to be exposed to American methods; then we can figure out how to adapt them to the Chinese context.

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<sup>74</sup> Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale Hum. Rts. & Dev. L.J. 117, 143-44 (2005).

<sup>75</sup> Brian Landsberg, report on Hangzhou workshop, July 21-August 7, 2008.

## Conclusion

The Educate the Educators program has had the hoped-for impact on the Chinese law schools participating in the program and has the potential of more far reaching impact. It has also had an unforeseen impact on the United States faculty who teach in the program. All of the participating Chinese law schools have enlarged their clinical programs, so that each year faculty who have completed our training programs teach clinical and lawyering skills courses to hundreds of students. All of the participating Chinese law schools have incorporated persuasive lawyering skills into their curricula, either in existing courses or in new courses; each year over a hundred students engage in persuasive lawyering learning. At least ten of our initial 30+ trainees are qualified to educate other educators, and most have either done so or will do so in summer 2010 in our upcoming workshop. We have helped strengthen a national vehicle for clinical legal education, akin to the United States Clinical Legal Education Association, the Committee of Chinese Clinical Legal Educators [CCCCLE], by providing it with materials and training, and by encouraging more law schools to join. Participant schools have created experiential education institutes, thus lending credibility to the faculty members teaching experiential courses. Chinese and U.S. publications give added visibility and credibility to experiential legal education in China.

The U.S. faculty has felt energized and inspired by the program. More important, the program has caused U.S. trainers to reevaluate and in some instances revise their teaching methods. We have learned to reconsider the relationships among the types of experiential learning. It has caused us to consider the appropriate balance between directive and reflective learning.

This past September I took a team from US AID to view a clinical education class at Zhejiang Gongshang University Law School, taught by Professor Liu Jianming. I had observed Chinese clinical classes before, where students described problems and professors told them how to solve them. By contrast, Professor Liu skillfully drew from students the objectives of client interviewing. A student typed their points, which were projected on a screen. Professor Liu quizzed two students who had previously conducted simulated interviews about their plans for the real interview that was about to take place. They then interviewed a real client who had consented to be interviewed in front of the class. The interview was videotaped. After the client left, Prof. Liu elicited student critiques of the interview, in light of the objectives they had identified. Then the student interviewers critiqued themselves. Only then did Prof. Liu offer brief comments on the student interviews. This class would have been considered outstanding in a U.S. law school; in China, given its relatively short history and paucity of tradition in experiential learning in law-school settings, it was nothing less than amazing. Both the interviewing students and the observing students were fully engaged in learning how to conduct an initial client interview. The combination of planning, doing, and reflection maximized the transfer of skills and values to the students.

Professor Liu wrote to our partner, Elliott Milstein, on New Years Eve to thank him: “From 2006 to now, only about three years, I have grown from an ordinary teacher to a good clinic teacher, from a trainee to a trainer ... I am fortunate to meet you and your faculty.”